

AMENDED IN SENATE MAY 26, 2011

SENATE BILL

No. 8

**Introduced by Senator Yee
(Coauthor: Senator Calderon)**

(Coauthors: Assembly Members ~~Beall and Portantino~~ *Ammiano, Beall, Huffman, Portantino, Silva, and Yamada*)

December 6, 2010

An act to amend Sections 72670, 72670.5, and 89901 of, and to add Section 92034 to, add Article 1.5 (commencing with Section 89913) to Chapter 7 of Part 55 of Division 8 of, and to add Chapter 14 (commencing with Section 92950) to Part 57 of Division 9 of, Title 3 of, the Education Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 8, as amended, Yee. Public records: auxiliary ~~organizations.~~ *organizations and UC campus foundations.*

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless those records are exempt from disclosure.

~~This bill would require specified entities to comply with the act, but would not require these entities to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because the individuals can obtain economic value from its disclosure or use. The bill would exempt from disclosure the names, addresses, and telephone numbers of persons who volunteer services or donate to specified entities if those persons request anonymity.~~

~~However, the bill would provide that this exemption does not apply if a volunteer or donor meets specified conditions.~~

Existing law establishes the segments of public postsecondary education in the state, including, but not limited to, the University of California administered by the Regents of the University of California and the California State University administered by the Trustees of the California State University.

This bill would require records maintained by an auxiliary organization of the California State University, as defined, or a University of California (UC) campus foundation, as defined, to be available to the public to inspect or copy at all times during the office hours of the organization or foundation, as specified. The bill would require an auxiliary organization and a UC campus foundation to follow specified requirements when fulfilling or denying a request for a record. The bill would prohibit specified records maintained by an auxiliary organization or UC campus foundation from being subject to disclosure. The bill would prohibit an auxiliary organization from disclosing trade secrets, as defined, and would require this information to be redacted from the organization's records before disclosure. The bill would provide specified judicial relief to persons seeking disclosure of records from an auxiliary organization or a UC campus foundation pursuant to this bill. The bill would require a disclosure of a record, which is exempt from disclosure, by an auxiliary organization or a UC campus foundation to constitute a waiver of the exemptions provided by this bill with regard to that record, except as specified. The bill would prohibit an auxiliary organization and a UC campus foundation from allowing another party to control the disclosure of a disclosable record. The bill would provide that its provisions do not apply to any records subject to a request made pursuant to the California Public Records Act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Article 1.5 (commencing with Section 89913) is*
- 2 *added to Chapter 7 of Part 55 of Division 8 of Title 3 of the*
- 3 *Education Code, to read:*

1 *Article 1.5. California State University Auxiliary Organizations*
2 *Transparency and Accountability Act of 2011*

3
4 *89913. The Legislature finds and declares all of the following:*

5 *(a) Access to information concerning the conduct of the people’s*
6 *business is a necessary and fundamental right of every person in*
7 *this state.*

8 *(b) California State University auxiliary organizations promote*
9 *and assist the Trustees of the California State University by*
10 *engaging in activities that are essential and integral to the mission*
11 *and purpose of the California State University.*

12 *(c) California State University auxiliary organizations are*
13 *independently governed corporations that are legally separate*
14 *from the California State University.*

15 *(d) Access to records used, owned, or maintained by auxiliary*
16 *organizations must be balanced by the need to protect the*
17 *individual privacy rights of donors and volunteers, and to protect*
18 *an auxiliary organization’s fiduciary interests.*

19 *89913.5. For purposes of this article, the following terms have*
20 *the following meanings:*

21 *(a) “Auxiliary organization” means those entities defined in*
22 *Section 89901.*

23 *(b) “Identifiable writing” means any handwriting, typewriting,*
24 *printing, photostating, photographing, photocopying, transmitting*
25 *by electronic mail or facsimile, and every other means of recording*
26 *upon any tangible thing, any form of communication or*
27 *representation, including, but not limited to, letters, words,*
28 *pictures, sounds, or symbols, or combinations thereof, and any*
29 *record thereby created, regardless of the manner in which the*
30 *record has been stored.*

31 *89914. (a) Records maintained by an auxiliary organization*
32 *shall be available to the public to inspect or copy at all times*
33 *during the office hours of the auxiliary organization. The records*
34 *subject to inspection or copying by the public pursuant to this*
35 *section shall include any identifiable writing containing*
36 *information relating to the conduct of the auxiliary organization*
37 *that is prepared, owned, used, or retained by an auxiliary*
38 *organization. Any reasonably segregable portion of a record shall*
39 *be promptly available for inspection and copying after redacting*
40 *those portions exempt from disclosure by law.*

1 (b) Upon a written request for a copy of a record that reasonably
2 describes an identifiable record, an auxiliary organization shall
3 make the record promptly available within a reasonable time to
4 any person upon payment of fees covering only the direct cost of
5 duplication, except with respect to records maintained by an
6 auxiliary organization exempt from disclosure by law. Nothing in
7 this article shall be construed to permit an auxiliary organization
8 to delay or obstruct the inspection or copying of public records.

9 (c) If a member of the public requests to inspect a public record
10 or obtain a copy of a record held by an auxiliary organization,
11 the organization shall assist the person to make a focused and
12 effective request that reasonably describes an identifiable record
13 or records.

14 89914.5. (a) Upon a written request for a copy of records, an
15 auxiliary organization shall determine, within 10 calendar days
16 from the receipt of the request, whether the request, in whole or
17 in part, seeks copies of disclosable records maintained by the
18 auxiliary organization and shall notify the requester in writing
19 without undue delay of the determination and the reasons therefor.

20 (b) An auxiliary organization shall justify withholding a record
21 by demonstrating that the record is exempt from disclosure by law,
22 or that, on the facts of the particular request, the public interest
23 served by not disclosing the record clearly outweighs the public
24 interest served by disclosure of the record.

25 (c) A response to a written request for inspection or copies of
26 public records that includes a determination that the request is
27 denied, in whole or in part, shall be in writing and shall set forth
28 the names and titles or positions of each person responsible for
29 the denial.

30 (d) This article shall not limit access to a public record on the
31 basis of the purpose for which the record is being requested, if the
32 record is otherwise subject to disclosure.

33 89915. (a) Unless otherwise prohibited by law, an auxiliary
34 organization that has information that constitutes an identifiable
35 record not exempt from disclosure pursuant to this chapter that is
36 in an electronic format shall make that record available in an
37 electronic format when requested by any person and, when
38 applicable, shall comply with both of the following:

39 (1) An auxiliary organization shall make an electronic record
40 available in the electronic format in which it holds the information.

1 (2) An auxiliary organization shall provide a copy of an
2 electronic record in the format requested if the requested format
3 is one that has been used by the auxiliary organization to create
4 copies for its own use or for provision to other entities or persons.
5 The cost of duplication shall be limited to the direct cost of
6 producing a copy of a record in an electronic format.

7 (b) Notwithstanding paragraph (2) of subdivision (a), the
8 requester shall bear the cost of producing a copy of the record,
9 including the cost to construct a record, and the cost of
10 programming and computer services necessary to produce a copy
11 of the record if either of the following applies:

12 (1) In order to comply with the provisions of subdivision (a),
13 an auxiliary organization would be required to produce a copy of
14 an electronic record and the record is one that is produced only
15 at otherwise regularly scheduled intervals.

16 (2) The request would require data compilation, extraction, or
17 programming to produce the record.

18 (c) If a request is for a record in a nonelectronic format, and
19 the record is also available in an electronic format, an auxiliary
20 organization may inform the requester that the record is available
21 in an electronic format.

22 (d) Nothing in this section shall be construed to do any of the
23 following:

24 (1) Require an auxiliary organization to reconstruct a record
25 in an electronic format if the auxiliary organization no longer has
26 the record available in an electronic format.

27 (2) Permit an auxiliary organization to make a record available
28 only in an electronic format.

29 (3) Require an auxiliary organization to release an electronic
30 record in the electronic form in which it is held by the auxiliary
31 organization if its release would jeopardize or compromise the
32 security or integrity of the original record, or of any proprietary
33 software with which it is maintained.

34 (4) Permit public access to records held by an auxiliary
35 organization to which access is otherwise restricted by law.

36 89915.5. Nothing in this article shall require an auxiliary
37 organization to disclose information that is exempt from disclosure
38 pursuant to the exemptions set forth under Sections 6254 to
39 6254.29, inclusive, of the Government Code.

1 89916. (a) Notwithstanding any other law, the following
2 records maintained by an auxiliary organization shall not be
3 subject to disclosure:

4 (1) Information that would disclose the identity of a donor,
5 prospective donor, or volunteer.

6 (2) Personal financial information, estate planning information,
7 and gift planning information of a donor or volunteer.

8 (3) Personal information related to a donor's private trusts or
9 a donor's private annuities administered by an auxiliary
10 organization.

11 (4) Information related to fundraising plans, fundraising
12 research, and solicitation strategies to the extent that these
13 activities are not already protected under Section 99040, Title 5
14 (commencing with Section 3426) of Part 1 of Division 4 of the
15 Civil Code, Section 1060 of the Evidence Code, or subdivision (k)
16 of Section 6254 of the Government Code.

17 (5) The identity of students and alumni to the extent that this
18 information is already protected under state and federal statutes
19 applicable to the California State University. This paragraph shall
20 not apply to a part-time or full-time employee of the auxiliary
21 organization, or to a student who participates in a legislative body
22 of a student body organization as defined in Section 89305.1.

23 (b) Subdivision (a) shall not be construed to exempt from
24 disclosure records that contain information regarding any of the
25 following:

26 (1) The amount and date of a donation.

27 (2) Any donor-designated use or purpose of a donation.

28 (3) Any other donor-imposed restrictions on the use of a
29 donation.

30 (4) (A) The identity of a donor who, in any calendar or fiscal
31 year, makes a gift or gifts, in a quid pro quo arrangement, where
32 either the value of the benefit received is in excess of two thousand
33 five hundred dollars (\$2,500) or the benefit would be impermissible
34 under state or federal law. In these circumstances, records
35 pertaining to the gift or gifts maintained by an auxiliary
36 organization that would otherwise be exempt from disclosure under
37 subdivision (a) shall be disclosed.

38 (B) Annually, on January 1, the monetary threshold set forth in
39 subparagraph (A) shall be adjusted upward or downward to reflect
40 the percentage change in the Consumer Price Index, as calculated

1 *by the United States Bureau of Labor Statistics, rounded off to the*
2 *nearest one thousand dollars (\$1,000).*

3 *(5) Self-dealing transactions, including, but not limited to, loans*
4 *of money or property, or material financial interests of or between*
5 *auxiliary officers or directors and an auxiliary organization, as*
6 *set forth in Sections 5233 and 5236 of the Corporations Code. In*
7 *these circumstances, records pertaining to the self-dealing*
8 *transactions maintained by an auxiliary organization that would*
9 *otherwise be exempt from disclosure under subdivision (a) shall*
10 *be disclosed.*

11 *(6) Any instance in which a volunteer or donor of a gift is*
12 *awarded, within five years of the date of the service or gift, a*
13 *contract from the university or auxiliary organization that was*
14 *not subject to competitive bidding. In these circumstances, records*
15 *pertaining to the service or gift maintained by an auxiliary*
16 *organization that would otherwise be exempt from disclosure under*
17 *paragraph (1) of subdivision (a) shall be disclosed.*

18 *89916.5. (a) Notwithstanding any provision of law, trade*
19 *secrets, as defined in Section 3426.1 of the Civil Code, shall not*
20 *be subject to disclosure. This information shall be redacted from*
21 *auxiliary organization records before disclosure.*

22 *(b) For purposes of this section, “trade secrets” means*
23 *information, including a formula, pattern, compilation, program,*
24 *device, method, technique, or process, that does both of the*
25 *following:*

26 *(1) Derives independent economic value, actual or potential,*
27 *from not being generally known to the public or to other persons*
28 *who can obtain economic value from its disclosure or use.*

29 *(2) Is the subject of efforts that are reasonable under the*
30 *circumstances to maintain its secrecy.*

31 *89917. Any person may institute proceedings for injunctive or*
32 *declarative relief or writ of mandate in any court of competent*
33 *jurisdiction to enforce his or her right to inspect or to receive a*
34 *copy of any record or class of records maintained by an auxiliary*
35 *organization under this article. The times for responsive pleadings*
36 *and for hearings in these proceedings shall be set by the judge of*
37 *the court with the object of securing a decision as to these matters*
38 *at the earliest possible time.*

39 *89917.5. (a) Whenever it is made to appear by verified petition*
40 *to the superior court of the county where the records or some part*

1 *thereof are situated that certain records maintained by an auxiliary*
2 *organization are being improperly withheld from a member of the*
3 *public, the court shall order the officer or person charged with*
4 *withholding the records to disclose the record or show cause why*
5 *he or she should not do so. The court shall decide the case after*
6 *examining the record in camera, if permitted by subdivision (b)*
7 *of Section 915 of the Evidence Code, papers filed by the parties,*
8 *and any oral argument and additional evidence as the court may*
9 *allow.*

10 *(b) If the court finds that an auxiliary organization official's*
11 *decision to refuse disclosure is not justified under this article, he*
12 *or she shall order the official to make the record public. If the*
13 *judge determines that the official was justified in refusing to make*
14 *the record public, he or she shall return the item to the official*
15 *without disclosing its content with an order supporting the decision*
16 *refusing disclosure.*

17 *(c) An order of the court, either directing disclosure by an*
18 *auxiliary organization or supporting the decision of the auxiliary*
19 *organization official refusing disclosure, is not a final judgment*
20 *or order within the meaning of Section 904.1 of the Code of Civil*
21 *Procedure from which an appeal may be taken, but shall be*
22 *immediately reviewable by petition to the appellate court for the*
23 *issuance of an extraordinary writ. Upon entry of any order*
24 *pursuant to this section, a party shall, in order to obtain review*
25 *of the order, file a petition within 20 days after service upon him*
26 *or her of a written notice of entry of the order, or within such*
27 *further time not exceeding an additional 20 days as the trial court*
28 *may for good cause allow. If the notice is served by mail, the period*
29 *within which to file the petition shall be increased by five days. A*
30 *stay of an order or judgment shall not be granted unless the*
31 *petitioning party demonstrates it will otherwise sustain irreparable*
32 *damage and probable success on the merits. Any person who fails*
33 *to obey the order of the court shall be cited to show cause why he*
34 *or she is not in contempt of court.*

35 *(d) The court shall award court costs and reasonable attorney's*
36 *fees to the plaintiff should the plaintiff prevail in litigation filed*
37 *pursuant to this section. The costs and reasonable attorney's fees*
38 *shall be paid by the auxiliary organization of which the official is*
39 *a member or employee and shall not become a personal liability*
40 *of the auxiliary organization official. If the court finds that the*

1 *plaintiff’s case is clearly frivolous, the court shall award court*
2 *costs and reasonable attorney’s fees to the auxiliary organization.*

3 *89918. (a) Notwithstanding any other provision of law, and*
4 *except as provided for in subdivision (c), whenever an auxiliary*
5 *organization discloses a record it maintains that is otherwise*
6 *exempt from this article, this disclosure shall constitute a waiver*
7 *of the exemptions specified in this article.*

8 *(b) For purposes of this section, “auxiliary organization”*
9 *includes a member, agent, volunteer, or officer of the auxiliary*
10 *organization acting within the scope of his or her affiliation with*
11 *the auxiliary.*

12 *(c) Subdivision (a) shall not apply to the following disclosures:*

13 *(1) Disclosures made to a donor or prospective donor with*
14 *regard to that donor’s donation or prospective donation to an*
15 *auxiliary organization.*

16 *(2) Disclosures made to a volunteer or prospective volunteer*
17 *with respect to that volunteer’s services being provided to the*
18 *auxiliary organization.*

19 *(3) Disclosures made through other legal proceedings or as*
20 *otherwise required by law.*

21 *(4) Disclosures within the scope of a disclosure required by law*
22 *that limits disclosure of specified writings to certain purposes.*

23 *89918.5. An auxiliary organization shall not allow another*
24 *party to control the disclosure of a record that is otherwise subject*
25 *to disclosure pursuant to this article.*

26 *89919. This article shall not apply to any records subject to a*
27 *request made pursuant to the California Public Records Act, as*
28 *set forth in Chapter 3.5 (commencing with Section 6250) of*
29 *Division 7 of Title 1 of the Government Code.*

30 *SEC. 2. Chapter 14 (commencing with Section 92950) is added*
31 *to Part 57 of Division 9 of Title 3 of the Education Code, to read:*

32

33 *CHAPTER 14. UNIVERSITY OF CALIFORNIA CAMPUS*
34 *FOUNDATION TRANSPARENCY AND ACCOUNTABILITY ACT OF 2011*
35

35

36 *92950. The Legislature finds and declares all of the following:*

37 *(a) Mindful of the right of individuals to privacy, access to*
38 *information concerning the conduct of the people’s business is a*
39 *necessary and fundamental right of every person in this state.*

1 (b) University of California campus foundations are
2 independently governed charitable nonprofit corporations that
3 are legally separate from the University of California (UC), but
4 provide important support to the individual campuses of the UC
5 and the UC system as a whole.

6 (c) The release of information maintained by University of
7 California campus foundations to the public must be balanced by
8 the need to protect the individual privacy rights of donors and
9 volunteers and to protect the fiduciary interests of these
10 organizations.

11 92951. As used in this chapter, the following terms have the
12 following meanings:

13 (a) “UC campus foundation” means the following corporations
14 organized under the laws of the State of California: University of
15 California, Berkeley Foundation, UC Davis Foundation, The
16 University of California, Irvine Foundation, The UCLA
17 Foundation, University of California, Merced Foundation, UC
18 Riverside Foundation, U.C. San Diego Foundation, University of
19 California, San Francisco Foundation, UC Santa Barbara
20 Foundation, U.C. Santa Cruz Foundation, and any other
21 foundation authorized by the Regents of the University of
22 California.

23 (b) “Identifiable writing” means any handwriting, typewriting,
24 printing, photostating, photographing, photocopying, transmitting
25 by electronic mail or facsimile, and every other means of recording
26 upon any tangible thing, any form of communication or
27 representation, including, but not limited to, letters, words,
28 pictures, sounds, or symbols, or combinations thereof, and any
29 record thereby created, regardless of the manner in which the
30 record has been stored.

31 92952. (a) Records maintained by a UC campus foundation
32 shall be available to the public to inspect or copy at all times
33 during the office hours of the foundation. The records subject to
34 inspection or copying by the public pursuant to this section shall
35 include any identifiable writing containing information relating
36 to the conduct of the UC campus foundation that is prepared,
37 owned, used, or retained by a UC campus foundation. Any
38 reasonably segregable portion of a record shall be promptly
39 available for inspection and copying after redacting those portions
40 exempt from disclosure by law.

1 (b) Upon a written request for a copy of a record that reasonably
2 describes an identifiable record, a UC campus foundation shall
3 make the record available within a reasonable time to any person
4 upon payment of fees covering only the direct cost of duplication,
5 except with respect to records maintained by a UC campus
6 foundation exempt from disclosure by law. Nothing in this chapter
7 shall be construed to permit a UC campus foundation to delay or
8 obstruct the inspection or copying of public records.

9 (c) If a member of the public requests to inspect a public record
10 or obtain a copy of a record held by a UC campus foundation, the
11 UC campus foundation shall assist the person to make a focused
12 and effective request that reasonably describes an identifiable
13 record or records.

14 92953. (a) Upon a written request for a copy of records, a UC
15 campus foundation shall determine, within 10 calendar days from
16 the receipt of such request, whether the request, in whole or in
17 part, seeks copies of disclosable records maintained by the UC
18 campus foundation and shall notify the requester in writing without
19 undue delay of the determination and the reasons therefor.

20 (b) A UC campus foundation shall justify withholding disclosure
21 of a record by demonstrating that the record is exempt from
22 disclosure by law, or that, on the facts of the particular request,
23 the public interest served by not disclosing the record clearly
24 outweighs the public interest served by disclosure of the record.

25 (c) A response to a written request for inspection or copies of
26 public records that includes a determination that the request is
27 denied, in whole or in part, shall be in writing and shall not set
28 forth the names and titles or positions of each person responsible
29 for the denial.

30 (d) This chapter shall not limit access to a public record on the
31 basis of the purpose for which the record is being requested, if the
32 record is otherwise subject to disclosure.

33 92954. (a) Unless otherwise prohibited by law, a UC campus
34 foundation that has information that constitutes an identifiable
35 record not exempt from disclosure pursuant to this chapter that is
36 in an electronic format shall make that record available in an
37 electronic format when requested by any person and, when
38 applicable, shall comply with both of the following:

39 (1) A UC campus foundation shall make the electronic record
40 available in the electronic format in which it holds the information.

1 (2) A UC campus foundation shall provide a copy of an
2 electronic record in the format requested if the requested format
3 is one that has been used by the UC campus foundation to create
4 copies for its own use or for provision to other entities or persons.
5 The cost of duplication shall be limited to the direct cost of
6 producing a copy of a record in an electronic format.

7 (b) Notwithstanding paragraph (2) of subdivision (a), the
8 requester shall bear the cost of producing a copy of the record,
9 including the cost to construct a record, and the cost of
10 programming and computer services necessary to produce a copy
11 of the record if either of the following applies:

12 (1) In order to comply with the provisions of subdivision (a), a
13 UC campus foundation would be required to produce a copy of
14 an electronic record and the record is one that is produced only
15 at otherwise regularly scheduled intervals.

16 (2) The request would require data compilation, extraction, or
17 programming to produce the record.

18 (c) If a request is for a record in a nonelectronic format, and
19 the record is also available in an electronic format, a UC campus
20 foundation may inform the requester that the record is available
21 in an electronic format.

22 (d) Nothing in this section shall be construed to do any of the
23 following:

24 (1) Require a UC campus foundation to reconstruct a record
25 in an electronic format if the UC campus foundation no longer
26 has the record available in an electronic format.

27 (2) Permit a UC campus foundation to make a record available
28 only in an electronic format.

29 (3) Require a UC campus foundation to release an electronic
30 record in the electronic form in which it is held by the UC campus
31 foundation if its release would jeopardize or compromise the
32 security or integrity of the original record or of any proprietary
33 software with which it is maintained.

34 (4) Permit public access to records held by any UC campus
35 foundation to which access is otherwise restricted by law.

36 92955. Nothing in this chapter shall require a UC campus
37 foundation to disclose information that is exempt from disclosure
38 pursuant to the specific exemptions set forth under Sections 6254
39 to 6254.29, inclusive, of the Government Code.

1 92956. (a) Notwithstanding any other law, the following
2 records maintained by a UC campus foundation shall not be subject
3 to disclosure:

4 (1) Information that would disclose the identity of a donor,
5 prospective donor, or volunteer.

6 (2) Personal financial information, estate planning information,
7 and gift planning information of a donor, prospective donor, or
8 volunteer.

9 (3) Personal information related to any of a donor's private
10 trusts or a donor's private annuities administered by a UC campus
11 foundation.

12 (4) Information related to fundraising plans, fundraising
13 research, and solicitation strategies to the extent that these
14 activities are not already protected under Section 99040, Title 5
15 (commencing with Section 3426) of Part 1 of Division 4 of the
16 Civil Code, Section 1060 of the Evidence Code, or subdivision (k)
17 of Section 6254 of the Government Code.

18 (5) The identity of students and alumni to the extent that this
19 information is already protected under state and federal statutes
20 applicable to the University of California. This paragraph shall
21 not apply to a part-time or full-time employee of the UC campus
22 foundation, or to a student who participates in a legislative body
23 of a student body organization on a University of California
24 campus.

25 (b) Subdivision (a) shall not be construed to exempt from
26 disclosure records that contain information regarding any of the
27 following:

28 (1) The amount and date of a donation.

29 (2) Any donor-designated use or purpose of a donation.

30 (3) Any other donor-imposed restrictions on the use of a
31 donation.

32 (4) (A) The identity of a donor who, in any calendar or fiscal
33 year, makes a gift or gifts, in a quid pro quo arrangement, where
34 either the value of the benefit received is in excess of two thousand
35 five hundred dollars (\$2,500) or the benefit would be impermissible
36 under state or federal law. In these circumstances, records
37 pertaining to the gift or gifts maintained by a UC campus
38 foundation that would otherwise be exempt from disclosure under
39 subdivision (a) shall be disclosed.

1 (B) Annually, on January 1, the monetary threshold set forth in
2 subparagraph (A) shall be adjusted upward or downward to reflect
3 the percentage change in the Consumer Price Index, as calculated
4 by the United States Bureau of Labor Statistics, rounded off to the
5 nearest one thousand dollars (\$1,000).

6 (5) Self-dealing transactions, including, but not limited to, loans
7 of money or property, or material financial interests of or between
8 foundation officers or directors and a UC campus foundation, as
9 set forth in Sections 5233 and 5236 of the Corporations Code. In
10 these circumstances, records pertaining to the self-dealing
11 transactions maintained by a UC campus foundation that would
12 otherwise be exempt from disclosure under subdivision (a) shall
13 be disclosed.

14 (6) Any instance in which a volunteer or donor of a gift is
15 awarded, within five years of the date of the service or gift, a
16 contract from the university or UC campus foundation that was
17 not subject to competitive bidding. In these circumstances, records
18 pertaining to the service or gift maintained by the UC campus
19 foundation that would otherwise be exempt from disclosure under
20 paragraph (1) of subdivision (a) shall be disclosed.

21 92957. Any person may institute proceedings for injunctive or
22 declarative relief or writ of mandate in any court of competent
23 jurisdiction to enforce his or her right to inspect or to receive a
24 copy of any record or class of records maintained by a UC campus
25 foundation under this chapter. The times for responsive pleadings
26 and for hearings in these proceedings shall be set by the judge of
27 the court with the object of securing a decision as to these matters
28 at the earliest possible time.

29 92958. (a) Whenever it is made to appear by verified petition
30 to the superior court of the county where the records or some part
31 thereof are situated that certain records maintained by a UC
32 campus foundation are being improperly withheld from a member
33 of the public, the court shall order the officer or person charged
34 with withholding the records to disclose the record or show cause
35 why he or she should not do so. The court shall decide the case
36 after examining the record in camera, if permitted by subdivision
37 (b) of Section 915 of the Evidence Code, papers filed by the parties,
38 and any oral argument and additional evidence as the court may
39 allow.

1 (b) If the court finds that a UC campus foundation official's
2 decision to refuse disclosure is not justified under this chapter, he
3 or she shall order the official to make the record public. If the
4 judge determines that the official was justified in refusing to make
5 the record public, he or she shall return the item to the official
6 without disclosing its content with an order supporting the decision
7 refusing disclosure.

8 (c) An order of the court, either directing disclosure by a UC
9 campus foundation official or supporting the decision of the UC
10 campus foundation official refusing disclosure, is not a final
11 judgment or order within the meaning of Section 904.1 of the Code
12 of Civil Procedure from which an appeal may be taken, but shall
13 be immediately reviewable by petition to the appellate court for
14 the issuance of an extraordinary writ. Upon entry of any order
15 pursuant to this section, a party shall, in order to obtain review
16 of the order, file a petition within 20 days after service upon him
17 or her of a written notice of entry of the order, or within such
18 further time not exceeding an additional 20 days as the trial court
19 may for good cause allow. If the notice is served by mail, the period
20 within which to file the petition shall be increased by five days. A
21 stay of an order or judgment shall not be granted unless the
22 petitioning party demonstrates it will otherwise sustain irreparable
23 damage and probable success on the merits. Any person who fails
24 to obey the order of the court shall be cited to show cause why he
25 or she is not in contempt of court.

26 (d) The court shall award court costs and reasonable attorney's
27 fees to the plaintiff should the plaintiff prevail in litigation filed
28 pursuant to this section. The costs and reasonable attorney's fees
29 shall be paid by the UC campus foundation of which the official
30 is a member or employee and shall not become a personal liability
31 of the UC campus foundation official. If the court finds that the
32 plaintiff's case is clearly frivolous, the court shall award court
33 costs and reasonable attorney's fees to the UC campus foundation.

34 92959. (a) Notwithstanding any other provisions of law, and
35 except as provided for in subdivision (c), whenever a UC campus
36 foundation discloses a record it maintains that is otherwise exempt
37 from this chapter, this disclosure shall constitute a waiver of the
38 exemptions specified in this chapter with regard to that record.

39 (b) For purposes of this section, "UC campus foundation"
40 includes a member, agent, volunteer, or officer of the UC campus

1 foundation acting within the scope of his or her affiliation with a
2 UC campus foundation.

3 (c) Subdivision (a) shall not apply to the following disclosures:

4 (1) Disclosures made to a donor or prospective donor with
5 regard to that donor’s donation or prospective donation to a UC
6 campus foundation.

7 (2) Disclosures made to a volunteer or prospective volunteer
8 with respect to that volunteer’s services being provided to a UC
9 campus foundation.

10 (3) Disclosures made through other legal proceedings or as
11 otherwise required by law.

12 (4) Disclosures within the scope of a disclosure required by law
13 that limits disclosure of specified writings to certain purposes.

14 92960. A UC campus foundation shall not allow another party
15 to control the disclosure of a record that is otherwise subject to
16 disclosure pursuant to this chapter.

17 92961. This chapter shall not apply to records subject to any
18 request made pursuant to the California Public Records Act, as
19 set forth in Chapter 3.5 (commencing with Section 6250) of
20 Division 7 of Title 1 of the Government Code.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, December 6, 2010. (JR11)**